

From: Joe Martin
To: Microsoft ATR
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Subject: Microsoft Settlement

Renata B. Hesse
Antitrust Division
U.S. Department of Justice

Re: Microsoft Settlement

I have been following the Microsoft Antitrust case with great interest. As a consumer, I find myself very much at the mercy of Microsoft's monopoly power. When I shop for a computer, I see only one brand of software available pre-installed--Microsoft. Email attachments I receive are often in file formats that can only be read by Microsoft software. I have felt like a captive of this juggernaut for years, and I fear the future holds more of the same.

When I learned that Microsoft had been found guilty of anti-competitive use of their monopoly power, I was encouraged. I looked forward to seeing them punished for their illegal actions, and restrained from repeating them in the future. I was very disappointed to read the proposed settlement. There appears to be no significant penalty for the past abuse of their monopoly power. I saw only the mildest of restrictions, aimed at industry conditions of the past rather than of the future. Microsoft keeps all the fruits of their past criminal behavior, and there is no incentive not to behave as arrogantly in the future as they have in the past. The provisions are cleverly drawn, so as to leave Microsoft plenty of room for evasive maneuvers. Interestingly enough, they are also worded so as to deny any relief to developers of open source software, which Microsoft has acknowledged as the greatest remaining threat to their dominance of the software industry.

The stock price told the story. It was not significantly affected by publication of the proposed settlement. The industry recognized that it would have little impact. An adequate settlement should have some impact on Microsoft's business, and this is not an outcome to be feared. Exposing the perpetual windfall that is Microsoft to the pressures of normal competition will be a good thing for the economy as a

whole.

I would look for two things in any acceptable settlement. First, penalties that punish past abuse, and then restrictions to prevent future abuse. Many possible measures would serve both objectives. Consider the following:

- 1.) Make Microsoft publish all of their proprietary file formats and communication protocols immediately. Specify harsh penalties if they are inaccurate or incomplete in publishing these. They should be required to drop all proprietary extensions to industry standards from their Web development software, except for such extensions which are accepted by a majority of competitors in the industry within a reasonable time after their publication.
- 2.) Void all exclusive or restrictive agreements with PC vendors which impose any financial or other penalty, direct or indirect, for including competitors' application software or for selling PC's loaded with other operating systems. Prohibit such agreements in the future.
- 3.) Require Microsoft to strip XP of all bundled applications for which established competitors offer free versions of an alternative. They are repeating in the multi-media player software market the exact same conduct for which they were just convicted in the Internet Browser market.
- 4.) Consider dividing the company, but not in the way most often proposed. The link between operating system and applications has been exploited so thoroughly that the damage cannot practically be undone, but the link between software and the delivery of services and content has not yet been exploited to the same extent. Require Microsoft to spin off all software development operations, separating them from the services and content portion of their business. Appoint monitors at each resulting unit to enforce their independence from each other. Alternatively, consider regulating them as a monopoly, just like a utility. Control their prices, and supervise the quality of their service, for the benefit of consumers.

The consistent pattern of Microsoft's behavior in the past is a fair way to predict future behavior. Unchecked, they can be expected to use anti-competitive measures in their efforts to dominate the markets they are entering now and chose to enter in the future. I would say to the court that you have an unrepentant law breaker in your hands, a repeat offender. Deal with them severely.

Thank you for considering my comments.

Jonathan Martin
Mobile, AL

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